

## **REMARKS**

Claims 1-65 are pending in the present application.

Claims 1-65 stand rejected under 35 U.S.C. § 102(e) as being anticipated by or, in the alternative, under 35 U.S.C. §103 as being obvious over, United States Patent 4,834,735, entitled “High Density Absorbent Members Having Lower Density And Lower Basis Weight Acquisition Zones”, to Alemany *et al.* (“Alemany”). Each of these grounds of rejection is respectfully traversed.

As a preliminary matter, Applicant notes that only claims 1-65 are pending in the present application although the non-final Office Action rejects claims 1-69.

The present application has been amended. In particular, claims 1, 7, 13, and 19 have been amended to clarify that the absorbent core and insult point have a substantially equal total basis weight. Support for this language is found throughout the application, including paragraph [0177], where it is noted that the location of the insult point is “the midpoint of the width of the absorbent core.”

Accordingly, no new matter is added through these amendments. In view of the above amendments and the following remarks, reconsideration is respectfully requested.

### **Rejections under 35 U.S.C. §§ 102(e) and 103**

The Examiner characterizes Alemany as disclosing an absorbent article, and by description, a method of designing an absorbent article, comprising a topsheet, a backsheet, and absorbent core between the topsheet and backsheet. The Examiner also characterizes Alemany as teaching “similar” materials for the core, topsheet, and backsheet. The Examiner concludes that Alemany meets the structural requirements of the claims.

Applicant respectfully submits that Alemany fails to meet all of the structural limitations of the absorbent article as recited in the amended claims. A *prima facie* case of either anticipation or obviousness can only be established when the claimed and prior art products are identical or substantially identical in structure or composition, or are produced by identical or substantially identical processes. *In re Best*, 562 F.2d 1252, 1255, 195 USPQ 430, 433 (CCPA 1977).

Applicant respectfully submits that Alemany fails to disclose an identical or substantially identical construction of the absorbent article as presently claimed. The claims have been amended to recite an absorbent article having an absorbent core with a basis weight substantially

equal to the basis weight of an insult point. In Alemany, the basis weight of the acquisition zone 56 must be lower than the basis weight of the storage zone 48. In Alemany, “the acquisition zone 56 must have both a relatively lower average density and lower average basis weight per unit area than the storage zone 48 to establish the preferred capillary force gradient between them.” Col. 12, lines 11-16. Accordingly, the composition of the absorbent article in Alemany is not substantially identical to the composition of the absorbent article as presently claimed. Indeed, the explicit recital in Alemany that the basis weight of the acquisition zone 56 must be lower than the basis weight of the storage zone 48 teaches away from the absorbent article as presently claimed. Therefore, Alemany does not disclose, nor is it inherent therein, an absorbent article having an absorbent core with a basis weight substantially equal to the basis weight of the insult point.

In addition, the Examiner characterizes Alemany as recognizing the absorbent capacity as a result effective variable of the materials used to make up the core. Applicant respectfully submits that Alemany does not recognize the leakage performance index as presently claimed as a result effective variable. The leakage performance index is a function of at least three variables, and in certain embodiments five variables, i.e., surrounds efficiency, third void strikethrough, total capacity of the article, percent utilization of the absorbent core upon insult, and front pad absorbency under load. The absorbency capacity is only one of the four variables comprising the leakage performance index. Thus, Alemany does not identify the other four variables comprising the leakage performance index, suggest which of the numerous variables affect the leakage performance index, or suggest which experiments are required to determine the leakage performance index. Therefore, the experimentation needed to identify the five variables that comprise the leakage performance index and derive the relationship among them requires more than routine experimentation.

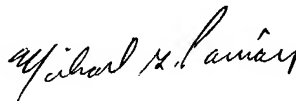
### CONCLUSION

In view of the above remarks, Applicant respectfully submits that Alemany does not disclose or teach, nor is it inherent therein, at least the following: (1) an absorbent article having an absorbent core with a basis weight substantially equal to the basis weight of the insult point; and (2) the leakage performance index as a result effective variable. Accordingly, the claims are patentable over Alemany.

Therefore, reconsideration and allowance of claims 1-65, as amended, are respectfully requested.

It is believed that no fees are due in connection with filing this Amendment. However, in the event it is determined that any fees are due, the Commissioner is hereby authorized to charge the undersigned's Deposit Account No. 50-3790.

Respectfully submitted,

A handwritten signature in black ink, appearing to read "Michael G. Panian".

Michael G. Panian  
Registration No.: 32623

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